

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
(Richmond Division)

In re:

CIRCUIT CITY STORES, INC., et al., * **Case No: 08-35653-KRH**
Debtors, * **Chapter 11**
* **(Jointly Administered)**

In re:

DANIEL E. WEIDLER, et al. *
Movant *
v. *
CIRCUIT CITY STORES, INC., et al., *
Respondents, *

MOTION FOR RELIEF FROM AUTOMATIC STAY
WITH SUPPORTING MEMORANDUM

Movants Daniel E. Weidler, Michael F. Yezback, Eloise Garcia, and Angie Duron (“Movants” or “Plaintiffs”), by and through its undersigned attorneys, and pursuant to 11 U.S.C. §362(d)(1), files this Motion for Relief From Automatic Stay (the “Motion”) seeking entry of an order lifting the automatic stay and authorizing a certain class action lawsuit pending in the Superior Court of California against Circuit City Stores, Inc. and various unknown individuals (the “Debtor”) to proceed through the settlement approval process so that the Movants will have

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a liquidated claim against the Debtor in this bankruptcy case. The grounds for the Motion are as follows:

1. The Court has jurisdiction over the Motion under 28 U.S.C. §§ 157 and 1334.
2. Venue in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409.
3. The statutory predicates for the relief sought herein are, *inter alia*, §§ 105, 361 and 362(d)(1) of the Bankruptcy Code, and Bankruptcy Rules 4001 and 9014.

Parties

4. On November 10, 2008 (the “Petition Date”), the Debtor and several related entities filed Petitions under Chapter 11 of the Bankruptcy Code.
5. The Debtor is in possession of its assets and is acting as a “debtor-in-possession” under 11 U.S.C. § 1107.
6. The Movants are the class representatives of a 208 member class of former employees of the Debtor.

The Litigation

7. On April 4, 2007, the Plaintiffs filed a proposed class action complaint in Los Angeles County Superior Court, Case No. BC369011, styled *Daniel E. Weidler, Michael F. Yezback, and Eloise Garcia v. Circuit City Stores, Inc.* (the “California Litigation”). Plaintiffs filed a First Amended Complaint on September 4, 2008 in the California Litigation. A genuine copy of the First Amended Complaint is attached hereto as Exhibit 1.

8. In September 2008, Plaintiffs and the Debtor reached a settlement of the California Litigation, which was documented in a Joint Stipulation of Settlement Agreement and

Release of Class Action Claims (the “Settlement Agreement”). A genuine copy of the Settlement Agreement is attached hereto as Exhibit 2.

9. On or about September 25, 2008, the Los Angeles County Superior Court entered an Order Granting Preliminary Approval of Class Action Settlement and set a hearing for December 12, 2008 at 9:00 a.m. (PST) to consider final approval of the Settlement. A genuine copy of the Order is attached hereto as Exhibit 3. Notice has been sent to all prospective members of the class and votes are being cast regarding the propriety of the Settlement. In order for the Settlement to be finalized, those votes must be counted and the state court must conduct the approval hearing on December 12, 2008.

Relief Requested

10. Pursuant to § 362(d)(1) of the Bankruptcy Code, the Movants are entitled to relief from the automatic stay for cause. While the term “cause” is not defined in the Bankruptcy Code, the Fourth Circuit Court of Appeals has established a test for determining whether cause exists to lift the stay when a movant seeks to proceed with litigation against the debtor outside of the bankruptcy court. See In re Robbins, 964 F.2d 342 (4th Cir. 1992). When deciding whether to lift the stay,

[t]he court must balance potential prejudice to the bankruptcy debtor’s estate against the hardships that will be incurred by the person seeking relief from the automatic stay if relief is denied. The factors that courts consider in deciding whether to lift the automatic stay include (1) whether the issues in the pending litigation involve only state law, so the expertise of the bankruptcy court is unnecessary; (2) whether modifying the stay will promote judicial economy and whether there would be greater interference with the bankruptcy case if the stay were not lifted because matters would have to be litigated in bankruptcy court; and (3) whether the estate can be protected properly by a requirement that creditors seek enforcement of any judgment through the bankruptcy court.

Id. at 345. In this instance, all three factors of the test are satisfied.

11. First, the claims underlying the Litigation are solely based California state law, not on the Bankruptcy Code. The Movants and the Debtor have agreed to the Settlement to resolve those claims, which is currently subject to a state court approval proceeding in California state court. The Litigation and approval of the Settlement are uniquely state court matters properly the subject matter jurisdiction of the California court system. Thus, it would further the interests of justice to lift the stay to permit the approval of the Settlement through the California state courts.

12. Second, judicial economy would be promoted by permitting the hearing to consider the approval of the Settlement to go forward on December 12, 2008. There is no reason to delay the hearing on the Settlement or for the Bankruptcy Court to deal with the issues underlying its approval when the Debtor and its affiliated companies should be focused on the restructuring process.

13. Finally, approval of the Settlement will have no adverse impact on the bankruptcy estate of the Debtor. The Movants are not seeking to collect on the Settlement, other than through the claims process in the Bankruptcy Court. Furthermore, because no estate property is at issue, the Bankruptcy Court has no interest in whether the Settlement is approved until such time as a proof of claim has been filed in this bankruptcy case.

WHEREFORE, the Movants request an Order:

- (a) Lifting the automatic stay to permit the California state court to hold the hearing on approval of the Settlement and to enter all necessary orders regarding that hearing;
- (b) Providing that, if the Settlement is approved, the Movants may not take any action to enforce any rights under the Settlement except through the Bankruptcy Court; and

(c) Granting such other relief as this Court deems just and proper.

Dated: November 20, 2008

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of November, 2008, a copy of the foregoing Motion for Relief from Automatic Stay was filed and served via the Court's Electronic Case Filing System on all parties receiving such notice and on all parties on the attached Service List.

/s/ Christopher A. Jones

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